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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1950

No. 406

LOUIS R. BOYD, *Petitioner,*

vs.

THE COUNTY OF FRESNO, MELVIN A. WILLEMIRTH, Sheriff of the County of Fresno, THE CIVIL SERVICE COMMISSION OF THE COUNTY OF FRESNO, State of California, and CARL FULLER, EARL I. EYMANN, WALTER H. WIEBE, CHARLES L. KAISER and WILLIAM STOCKBERGER, constituting the members of said Civil Service Commission, *Respondents.*

On Petition for Writ of Certiorari to the District Court of Appeal of the State of California, in and for the Fourth Appellate District.

BRIEF FOR RESPONDENTS IN OPPOSITION.

JURISDICTION.

Petitioner in his application for Writ of Certiorari claims that due process of a procedural nature,

guaranteed by the Fourteenth Amendment to the Constitution of the United States was denied him in a hearing before the Civil Service Commission of the County of Fresno, State of California. The right to such a hearing arises only from the provisions of the County Civil Service Ordinance and the right to the various appeals through the courts of the State of California admittedly arise only through the provisions of the laws of the State of California. To sustain his burden, it is incumbent upon petitioner to establish, as he claims, that he has a property right of which he is being denied.

It is respectfully submitted that no such right is shown to be here involved and therefore no federal question is raised. The California courts have pointed out that all rights of an employee in Civil Service proceedings, even to a hearing at all, flow from the statute or ordinance and therefore no question of due process either under the Constitution of the United States or of the State of California, can arise. *Payne v. State Personnel Board*, 162 Cal. App. 2d 679.

None of the cases cited by petitioner are authority for a contrary view. They all involve deprivations of liberty or often recognized property rights or federal statutes or laws.

A reading of Appendices B, C and D attached to the application of petitioner, pages ii to xxiv, fails to disclose any instance at which it was contended that petitioner was deprived of any right guaranteed by the Constitution of the United States or that a

federal question was involved. A fair reading does disclose a contention that petitioner was denied a fair trial guaranteed under Section 1084.5 of the Code of Civil Procedure of the State of California, set forth in Appendix D attached to the petition. The Petition for Writ of Certiorari fails to disclose when the contention that there was such a federal question was first made or that it was diligently pursued.

STATEMENT OF THE CASE

The statement of the case set forth by petitioner is substantially correct, although the testimony set forth relating to the alleged bias and prejudice of Commissioner Eymann is fragmentary and incomplete. The complete testimony is set forth in Reporter's Transcript page 61, line 1 to page 80, line . and Reporter's Transcript page 81, line 11 to 85, line 16. For a complete and accurate statement of facts, see the statement thereof in the opinion of the District Court of Appeal, Appendix B to the petition, page ii to page vii, line 19.

QUESTIONS PRESENTED

We submit that the questions presented by the petition and the record are not quite as set forth in the petition under this title but rather are:

1. Whether the due process clause of the 14th Amendment of the Constitution of the United States is involved in proceedings before a county administra-

tive tribunal where no right to liberty or property is involved but merely the right to public employment under the terms of a county civil service ordinance, and

2. If so, whether or not the petitioner was denied due process of law under the particular facts of this case.

REASONS WHY WRIT SHOULD NOT BE GRANTED

I.

NO FEDERAL QUESTION IS INVOLVED.

As set forth supra, no federal question involving the due process clause of the 14th Amendment of the Constitution of the United States is involved in a county civil service hearing to determine the sufficiency of the grounds for the discharge of a county employee under the terms of a local civil service ordinance. A local civil service system is not required by any of the provisions of the federal Constitution, and in the absence of local civil service, a county employee may be discharged at will. Accordingly any rights of the employee flow only from the civil service ordinance and not from the laws or Constitution of the United States. Petitioner cites *Greene v. McElroy*, 360 U.S. 474 in support of his contention that constitutional property rights are involved in this case. That case, involving the Fifth Amendment to the Constitution of the United States, however, related to the question of security clearance under the National Security Act

and federal governmental interference with the right to pursue a profession in private employment. Certainly this involved a federal question and constitutionally protected rights to engage in lawful private employment without undue governmental interference. The case obviously is no authority that the administration of a local civil service ordinance gives rise to federal questions.

II.

NO SHOWING OF A LACK OF DUE PROCESS.

However, assuming that this Court should be of the opinion that a federal question is involved, nevertheless, this discretionary writ should be denied for there is no showing of a denial of due process but rather a full and complete hearing. The record discloses that the trial court carefully went into the question of bias and prejudice on the part of the Commissioner Eymann whose fairness is under attack and took evidence thereon. The quoted testimony set forth in the petition is only a part of the testimony. For the entire testimony see Reporter' Transcript, page 61, line 1 to page 80, line 19. As a result of the evidence, the trial court found as a fact that the commissioner was not biased or prejudiced and that the petitioner had had a fair hearing. Appendix C to Petition for Writ of Certiorari, Memorandum Opinion and Order for Judgment, pages xix to xx, Finding number 2. The District Court of Appeal carefully reviewed the

evidence and sustained the trial court in this respect. Appendix B to Petition for Writ of Certiorari, pages viii to xiv. The California Supreme Court by implication concurred by denying a hearing. Petitioner would have this Court reverse the trial court, the District Court of Appeal and the Supreme Court upon a finding of fact dependent upon a complicated factual situation and conflicting evidence.

III.

ANY QUESTION INVOLVED IS NOT SUFFICIENTLY SUBSTANTIAL IN NATURE.

While the case may be of importance to the petitioner, it could be of no importance insofar as the development of the law is concerned. The decision of the trial court turned upon conflicting evidence, the court's observance of the witnesses and its opinion as to where the truth lay. The District Court of Appeal found that there was ample evidence to support the finding of the trial court. Even though no federal question be involved, petitioner is entitled to a fair hearing under the laws of the State of California, and the Civil Service Ordinance of Fresno County. This right the California courts, as demonstrated by the record in this case, have most adequately inquired into and zealously safeguarded.

CONCLUSION

For the foregoing reasons, it is respectfully submitted, the Petition for Writ of Certiorari should be denied.

Dated, Fresno, California.
October 6, 1960.

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